



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226

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LABELING AND ADVERTISING MALT BEVERAGES
WITH LESS THAN ONE-HALF OF ONE PERCENT ALCOHOL
BY VOLUME AS "NON-ALCOHOLIC/ALCOHOL-FREE"
AND RESTRICTIONS FOR USE OF THE CLASS DESIGNATION "BEER"

Brewers, Wholesalers, Importers and others concerned:

PURPOSE: This circular notifies industry members of an ATF Ruling which will be published in a future issue of the Alcohol, Tobacco and Firearms Bulletin and reminds industry members about restrictions for use of the class designation "beer" for labeling and advertising malt beverage products. The ruling will read substantially as follows:

The Bureau has reconsidered its position with respect to the use of the terms "Non-Alcoholic" and "Alcohol-Free" for the labeling and advertising of certain malt beverage products.

Sections 5(e) and 5(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. §§ 205(e) and (f) provide in general terms that malt beverage labeling and advertising shall not contain any statement which is false, misleading, deceptive or likely to mislead the consumer regarding the product. In addition, sections 5(e) and 5(f) provide that malt beverage labeling and advertising shall not contain any statement concerning the alcohol content of the product. More specifically, sections 5(e)(2) and 5(f)(2) prohibit statements of, or statements likely to be considered as statements of, alcohol content of malt beverages except as required by State law.

Regulations which implement these provisions are set forth in 27 C.F.R. Part 7. In particular, sections 7.29(a) and 7.54(a) prohibit false and misleading statements in labeling and advertising of malt beverages. In addition sections 7.26 and 7.29(f) prohibit any statement of alcohol content of the malt beverage from appearing on the label unless required by State law. Section 7.29(f) prohibits references to statements that are likely to be considered as statements of alcohol content except where required by State law. See also 27 C.F.R. § 7.54(c) as it applies to advertisements.

Since prohibition, the term "non-alcoholic," without further qualification, has been used to describe malt beverages containing less than one half of 1 percent (.5 percent) alcohol by volume. During prohibition these products were legal because the alcohol level was so low that they were not considered alcohol beverages. The Internal Revenue Code (26 U.S.C. § 5052) also treats these products as non-alcoholic by defining beer for tax purposes as products containing "one-half of 1 percent or more of alcohol by volume."

In recent years in response to an increased concern about the effects of alcohol beverages, some malt beverages which contain no alcohol have been marketed as "alcohol-free". With the emergence of alcohol-free products there is an increased risk that consumers would consider the terms "alcohol-free" and "non-alcoholic" as synonymous, both meaning the product contains "no" alcohol, when in fact the non-alcoholic product contains trace amounts of alcohol.

Under these circumstances, the use of the term "non-alcoholic" on labels of products which contain some trace amount of alcohol, but less than .5 percent, would likely mislead the consumer unless the term is qualified by some language that discloses that trace amounts of alcohol are present in the product. However, as noted earlier, sections 5(e) and (f) of the FAA Act prohibit statements of alcohol content from appearing in malt beverage labeling and advertising. The scope of this prohibition was addressed in a recent ATF Ruling.

In ATF Rul. 84-1, 1984-2 A.T.F.Q.B., 35 the Bureau held that statements of actual alcohol content by weight or volume fall within the proscriptions of the FAA Act. However, with respect to statements likely to be considered statements of alcoholic content, the following was stated:

In view of the statute's purpose, the Bureau believes that the phrase "statements likely to be considered as statements of alcoholic content" relates only to statements that represent the malt beverage as high in alcohol content. The statute would not preclude statements indicating that the alcohol content of the malt beverage is below the range of alcohol content found in regular malt beverages.

This position took into consideration the legislative history of the FAA Act which established that Congress intended that malt beverages should not be sold on the basis of alcohol strength. The report of the Ways and Means committee contains the the following statement with regard to this provision:

The variation of alcoholic content has little consumer importance and the industry recognizes that attempts to sell beer and other malt beverages on the basis of alcoholic content are attempts to take advantage of the ignorance of the consumer and of the psychology created by prohibition experiences. (H. Rept. No. 1542, on H.R. 8870, 74th Cong., Federal Alcohol Control Bill, p. 12).

In view of these stated objectives of the FAA Act, the Bureau has determined that qualifying the term "non-alcoholic" with a statement that the product "contains less than .5 percent alcohol by volume" would prevent any misleading impression that would likely arise with the use of the "non-alcoholic" description. Such qualifying language is not a statement of the actual alcoholic content, as described in ATF Ruling 84-1. Moreover, it would not violate the purpose of sections 5(e) and (f) because it could not be used to sell the product on the basis of alcohol strength. The only purpose for the qualifying statement is to prevent the possible misleading effect of the "non-alcoholic" description.

HELD, only malt beverage products which contain no alcohol may be labeled and advertised with the term "alcohol free."

HELD FURTHER, malt beverage products which are labeled and advertised with the term "non-alcoholic" will be considered misleading under sections 5(e) and (f) of the FAA Act unless in direct conjunction with the term "non-alcoholic," there is a statement "contains less than 0.5 percent alcohol by volume."


HELD FURTHER, existing certificates of label approval for malt beverage products which do not meet the requirements of this ruling will expire at midnight, April 1, 1986. Applications for certificates of label approval received on or after September 4, 1985, must meet the requirements herein discussed.

ADDED NOTE. The Bureau has found that some labels have been approved which bear the class designation "beer" for malt beverage products with an alcohol content of less than 0.5 percent by volume. Industry members are reminded that 27 CFR 7.24(d) and 7.54(d) prohibit the class designations "beer", "lager beer", "lager", "ale", "porter", or "stout" or any other class and type designation commonly associated with malt beverages containing 0.5 percent or more alcohol by volume to be used in labeling and advertising any product containing less than 0.5 percent alcohol by volume.

The Bureau recognizes that several industry members have received certificates of label approval which may be contrary to Section 7.24(d). Therefore, existing certificates of label approval for malt beverage products which do not meet the requirements of this regulation may remain operative until April 1, 1986. Then those particular certificates should be surrendered to the Bureau for cancellation. Applications for certificates of label approval received on or after September 4, 1985, must meet the requirements herein discussed.

Industry members are reminded to carefully monitor the alcohol content of malt beverages with less than 0.5 percent alcohol by volume, not only for labeling purposes, but also for tax purposes, since malt beverages with an alcohol content of 0.5 percent or more by volume are subject to the beer tax imposed by 26 U.S.C. 5051.

INQUIRIES. Any person having questions regarding this circular should refer to it by number, and address all inquiries to the Associate Director (Compliance Operations), ATTN: Chief, Industry Compliance Division, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226.


Acting Director

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